

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARIUS DE'MON LAKE,  
  
Plaintiff,  
  
v.  
  
JEREMY ROWE,  
  
Defendant.

No. 2:23-cv-1518 KJN P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding pro se. Plaintiff's complaint was filed with the court on July 24, 2023. On December 14, 2023, defendant filed a notice of related cases. Review of the court's records reveals that on July 5, 2023, plaintiff filed a complaint containing virtually identical Eighth Amendment allegations as to defendant Rowe. (Lake v. Covello, Case No. 2:23-cv-1311 DMC P (E.D. Cal.)).<sup>1</sup> Due to the duplicative nature of the present action,<sup>2</sup> the court

<sup>1</sup> A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman, 803 F.2d 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

<sup>2</sup> In both cases, plaintiff claims that he was subjected to excessive force on July 7, 2022, at Mule Creek State Prison. In the earlier action, plaintiff named defendant Rowe and two additional officers, Landre and Green. But in the instant action, plaintiff only named defendant Rowe.

In the instant action, plaintiff also included a Ralph Act claim against defendant Rowe, but plaintiff consented to dismiss such claim (ECF No. 11), and it was dismissed on September 12, 2023 (ECF No. 12).

1 recommends that the complaint be dismissed.

2 On December 14, 2023, defendant also filed a motion to extend the ADR stay and stay the  
3 case pending resolution of plaintiff's underlying criminal case. However, in light of these  
4 findings and recommendations, defendant is relieved of his obligation to respond to the October  
5 31, 2023 order referring the case to the post-screening ADR project, such referral is rescinded,  
6 and defendants' motion is denied without prejudice.

7 Accordingly, IT IS HEREBY ORDERED that:

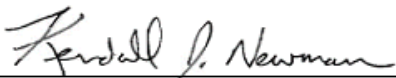
- 8 1. The ADR stay of this case (ECF No. 18) is lifted;  
9 2. Defendant is relieved of his obligation to respond to the October 31, 2023 order  
10 referring the case to the post-screening ADR project, and such referral is rescinded;  
11 3. Defendant's motion (ECF No. 23) is denied without prejudice; and  
12 4. The Clerk of the Court is directed to assign a district judge to this case.

13 Further, IT IS RECOMMENDED that this action be dismissed without prejudice. See  
14 Fed. R. Civ. P. 41(b).

15 These findings and recommendations are submitted to the District Judge assigned to this  
16 case pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served  
17 with these findings and recommendations, plaintiff may file written objections with the court.  
18 The document should be captioned "Objections to Magistrate Judge's Findings and  
19 Recommendations." Plaintiff is advised that failure to file objections within the specified time  
20 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th  
21 Cir. 1991).

22 Dated: December 18, 2023

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE